

CLERK US BANKRUPTCY COURT
DISTRICT OF OREGON

'05 AUG 16 P3:17

LODGED _____ REC'D _____

PAID _____ DOCKETED _____

Albert N. Kennedy, OSB No. 82142

Direct Dial: (503) 802-2013

Facsimile: (503) 972-3713

E-Mail: al@tonkon.com

Timothy J. Conway, OSB No. 85175

Direct Dial: (503) 802-2027

Facsimile: (503) 972-3727

E-Mail: tim@tonkon.com

Michael W. Fletcher, OSB No. 01044

Direct Dial: (503) 802-2169

Facsimile: (503) 972-3869

E-Mail: michaelw@tonkon.com

TONKON TORP LLP

1600 Pioneer Tower

888 S.W. Fifth Avenue

Portland, OR 97204

Attorneys for Tort Claimants Committee

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re

ROMAN CATHOLIC ARCHBISHOP OF
PORTLAND IN OREGON, AND SUCCESSORS, A
CORPORATION SOLE, DBA THE ARCHDIOCESE
OF PORTLAND IN OREGON,

Debtor.

TORT CLAIMANTS COMMITTEE,

Plaintiff,

v.

ROMAN CATHOLIC ARCHBISHOP OF
PORTLAND IN OREGON, AND SUCCESSORS, A
CORPORATION SOLE, dba THE ARCHDIOCESE
OF PORTLAND IN OREGON; JOHN RICKMAN,
GLENN PELIKAN and JOHNSTON MITCHELL,
individually and on behalf of all others similarly
situated; St. ANDREWS CHURCH (PORTLAND), as
represented by its pastor, REV. CHARLES LIENERT,
St. ANTHONY CHURCH (TIGARD), as represented
by its pastor, REV. LESLIE M. SIEG, and St. JUAN
DIEGO CHURCH, as represented by its pastor,

Case No. 04-37154-elp11

Adv. Proc. No. 04-03292-elp

**TORT CLAIMANTS
COMMITTEE'S THIRD
MOTION FOR PARTIAL
SUMMARY JUDGMENT
(11 U.S.C. § 544(a)(3))**

ORAL ARGUMENT
REQUESTED

REV. JOHN KERNS, individually and on behalf of all
 parishes; COMMITTEE OF CATHOLIC PARISHES,
 PARISHIONERS AND INTERESTED PARTIES;
 CENTRAL CATHOLIC HIGH SCHOOL PARENTS'
 ASSOCIATION; CENTRAL CATHOLIC HIGH
 SCHOOL ALUMNI ASSOCIATION; PHOEBE
 JOAN O'NEILL; MARIST HIGH SCHOOL
 PARENTS AND ALUMNI SERVICE CLUB;
 FRIENDS OF REGIS HIGH SCHOOL; MARIST
 HIGH SCHOOL FOUNDATION, an Oregon non-
 profit corporation; CATHOLIC YOUTH
 ORGANIZATION/CAMP HOWARD, an Oregon
 non-profit corporation; the St. ELIZABETH PARISH
 OF PORTLAND, OREGON, an Oregon non-profit
 corporation; THE MISSIONARIES OF THE HOLY
 SPIRIT, a California corporation; REGIS
 ASSOCIATION; REGIS HIGH SCHOOL
 FOUNDATION, an Oregon non-profit corporation,

Defendants.

Pursuant to Bankruptcy Rule 7056 and Federal Rule of Civil Procedure 56,
 the Tort Claimants Committee moves for an order granting it partial summary judgment
 (a) avoiding the equitable or beneficial interests, if any, of all defendants other than Debtor,
 in the Test Properties (as that term is hereinafter defined); and (b) declaring that Debtor holds
 title to the Test Properties free and clear of any such equitable or beneficial interests. The
 Test Properties subject to this motion are properties listed on Exhibit 14 dated September 23,
 2004, attached in response to question 14 to Debtor's Amended Statement of Financial
 Affairs filed in Debtor's bankruptcy case on October 13, 2004 as being beneficially or
 equitably owned by:

1. St. Elizabeth Ann Seton Church, Aloha;
2. St. Mary, Our Lady of the Dunes Church, Florence;
3. St. Michael Church, Oakridge;
4. St. Philip Benizi Church, Oregon City;
5. Holy Redeemer Church, Portland;
6. St. Birgitta Church, Portland;

7. St. John Fisher Church, Portland;
8. Queen of Peace Church, Salem;
9. Immaculate Conception Church, Stayton; and
10. Regis High School.

The Test Properties are more particularly identified by real property tax account number and location on Exhibit 1 to this Motion. Exhibit 1 also identifies the Preliminary Title Report covering each Test Property.

This Motion is supported by the following:

1. Tort Claimants Committee's Memorandum in Support of Third Motion for Partial Summary Judgment;
2. Concise Statement of Material Facts in Support of Tort Claimants Committee's Third Motion for Partial Summary;
3. Declaration of Albert N. Kennedy in Support of Tort Claimants Committee's Third Motion for Partial Summary Judgment;
4. Affidavit of Malcolm Newkirk in Support of Tort Claimants Committee's Third Motion for Partial Summary Judgment;
5. Affidavit of Karen Bachman in Support of Tort Claimants Committee's Third Motion for Partial Summary Judgment;
6. Affidavit of Anne L. Lewis in Support of Tort Claimants Committee's Third Motion for Partial Summary Judgment; and

* * *

* * *

* * *

* * *

* * *

* * *

1 7. Affidavit of Patricia L. Miller in Support of Tort Claimants
2 Committee's Motion for Partial Summary Judgment previously filed in this adversary
3 proceeding on November 12, 2004 (Docket No. 28).

4 DATED this 16th day of August, 2005.

5 TONKON TORP LLP

6
7 By 
8 ALBERT N. KENNEDY, OSB No. 82142
9 Attorneys for Tort Claimants Committee

032545\00001\645613 V001

EXHIBIT 1

**TEST PROPERTIES
TORT CLAIMANTS COMMITTEE'S
THIRD MOTION FOR PARTIAL SUMMARY JUDGMENT**

PROPERTY TAX ACCT.	CHURCH/SCHOOL	CITY	COUNTY	PRELIM. TITLE REPORT¹
R359873	St. Elizabeth Ann Seton Church	Aloha	Washington	Ex. 1
860773	St. Mary Our Lady of the Dunes Church	Florence	Lane	Ex. 2
860781	St. Mary Our Lady of the Dunes Church	Florence	Lane	Ex. 2
860799	St. Mary Our Lady of the Dunes Church	Florence	Lane	Ex. 2
116204	St. Michael Church	Oakridge	Lane	Ex. 3
955045	St. Michael Church	Oakridge	Lane	Ex. 3
1376843	St. Philip Benizi Church	Oregon City	Clackamas	Ex. 4
1563365	St. Philip Benizi Church	Oregon City	Clackamas	Ex. 4
907629	St. Philip Benizi Church	Oregon City	Clackamas	Ex. 4
R315539	Holy Redeemer Church	Portland	Multnomah	Ex. 5
R502476	Holy Redeemer Church	Portland	Multnomah	Ex. 5
R325476	St. Birgitta Church	Portland	Multnomah	Ex. 6
R325478	St. Birgitta Church	Portland	Multnomah	Ex. 6
R113793	St. John Fisher Church	Portland	Multnomah	Ex. 7
R329515	St. John Fisher Church	Portland	Multnomah	Ex. 7
R329535	St. John Fisher Church	Portland	Multnomah	Ex. 7
R329566	St. John Fisher Church	Portland	Multnomah	Ex. 7
R73132	Queen of Peace Church	Salem	Marion	Ex. 8
R81395	Queen of Peace Church	Salem	Marion	Ex. 9
R34218	Immaculate Conception Church	Stayton	Marion	Ex. 10
R103753	Immaculate Conception Church	Stayton	Marion	Ex. 11
R103810	Immaculate Conception Church	Stayton	Marion	Ex. 12
R103811	Immaculate Conception Church	Stayton	Marion	Ex. 13
R103812	Immaculate Conception Church	Stayton	Marion	Ex. 14
R103848	Immaculate Conception Church	Stayton	Marion	Ex. 15
R103880	Immaculate Conception Church	Stayton	Marion	Ex. 16
R103930	Immaculate Conception Church	Stayton	Marion	Ex. 17
R103931	Immaculate Conception Church	Stayton	Marion	Ex. 18
R103932	Immaculate Conception Church	Stayton	Marion	Ex. 19
R34210	Immaculate Conception Church	Stayton	Marion	Ex. 20
R34219	Immaculate Conception Church	Stayton	Marion	Ex. 17
R34310	Regis High School	Stayton	Marion	Ex. 22
R34312	Regis High School	Stayton	Marion	Ex. 22

032545\00001\645666 V001

¹ All of the Preliminary Title Reports are attached to the Affidavit of Malcolm Newkirk. The exhibit numbers refer to the Newkirk exhibit number for each such Preliminary Title Report.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **TORT CLAIMANTS COMMITTEE'S THIRD MOTION FOR PARTIAL SUMMARY JUDGMENT (11 U.S.C. § 544(a)(3))** on:

Pamela J. Griffith
U.S. Trustee's Office
620 S.W. Main Street, Room 213
Portland, OR 97205

Howard M. Levine
Thomas W. Stilley
William N. Stiles
Sussman Shank LLP
1000 S.W. Broadway, Suite 1400
Portland, OR 97205-3089
Attorneys for Debtor Roman Catholic
Archbishop of Portland in Oregon

James M. Finn
Schwabe, Williamson & Wyatt, P.C.
1600-1900 Pacwest Center
1211 S.W. Fifth Avenue
Portland, OR 97204-3795
Special Counsel for Debtor

L. Martin Nussbaum
Rothgerber Johnson & Lyons LLP
Wells Fargo Tower, Suite 1100
90 South Cascade Avenue
Colorado Springs, CO 80903
Special Counsel for Debtor

Brad T. Summers
Ball Janik LLP
1100 One Main Place
101 S.W. Main Street
Portland, OR 97204-3219
Attorneys for Central Catholic High
School Parents Association and
Central Catholic High School Alumni
Association

David A. Foraker
Greene & Markley, P.C.
1515 S.W. Fifth Avenue, Suite 600
Portland, OR 97201-5492
Future Claimants Representative

Bradley S. Copeland
Loren S. Scott
Arnold Gallagher Saydack Percell
Roberts & Potter, P.C.
800 U.S. Bank Center
800 Willamette Street
P. O. Box 1758
Eugene, OR 97440-1758
Attorneys for Intervenor Marist High
School Parent & Alumni Service Club

REQUESTS FOR NOTICE:

Steven M. Hedberg
Douglas R. Pahl
Jeanette L. Thomas
Perkins Coie LLP
1120 NW Couch Street, 10th Floor
Portland, OR 97209-4128
Attorneys for Parishes and
Parishioners Committee

John L. Langslet
Scott A. Kamin
Michael J. Farrell
Martin, Bischoff, Templeton,
Langslet & Hoffman
900 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204
Attorneys for Oregon Insurance
Guaranty Association

Joseph A. Field
Field & Associates
Oregon National Building - Suite 910
610 S.W. Alder Street
Portland, OR 97205
Attorneys for ACE Property &
Casualty Company, fka CIGNA
Property & Casualty Company, fka
Aetna Insurance Company

1 ☒ mailing a copy thereof in a sealed, first-class postage prepaid envelope,
2 addressed to each party's last-known address and depositing in the U.S. mail at Portland,
Oregon on the date set forth below;

3 ☐ causing a copy thereof to be hand-delivered to each party at each party's
4 last-known address on the date set forth below;

5 ☐ sending a copy thereof via overnight courier in a sealed, prepaid envelope,
addressed to each party's last-known address on the date set forth below;


6 ☐ faxing a copy thereof to each party at such party's last-known facsimile
7 number on the date set forth below; or

8 ☐ e-mailing a copy thereof to each party at such party's last-known e-mail
address on the date set forth below.

9 DATED this 16th day of August, 2005.

10 TONKON TORP LLP

11
12 By


13 ALBERT N. KENNEDY, OSB No. 82142
Attorneys for Tort Claimants Committee

14 032545\00001\645613 V001
15
16
17
18
19
20
21
22
23
24
25
26